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Dr. Paul J. Padalino, Superintendent
Nora Scherer, Board of Education President

61 Crown Street ■ Kingston, NY 12401
Phone: (845) 339-3000
Web: www.kingstoncityschools.org

May 12, 2016

Dear Alderman at Large Noble,

At the last Kingston Board of Education meeting on May 4, coming out of executive session, we voted unanimously to forward, in its entirety, a memo we received from our school attorney, Mr. David Shaw. We had requested an analysis of how that federal legislation would apply to the proposed project on Prince Street. In the aforementioned memo, Mr. Shaw gave us an explanation of how the Gun Free School Zone Act could be applied in this instance.

I am also in receipt of an email from Mr. Shaughnessy, a colleague on the school board, who has forwarded a letter, written by Dr. Soyer to every member of the Common Council, proclaiming that his FFL interview (I am not sure what that is) clearly puts the high school more than 1000 feet from 90 Prince Street. Since both Mr. Shaughnessy and the group of home schooled students who spoke at the Common Council meeting on May 3 arrived at a distance of just under 700 feet, we would like to know how the ATF measured the distance for Dr. Soyer's application and what starting and ending points were utilized. The attachment to Dr. Soyer's letter is a brochure from the ATF briefly explaining the Gun Free School Zone Act but not in the detail provided by our counsel.

Please see the attached. Paragraphs one and two of page 2 of Mr. Shaw's memo are of particular interest. Again, our concern with the proposed project is its proximity to facilities serving our district's children.

Thank you for considering this information.

Sincerely yours,

A handwritten signature in cursive script, reading 'Nora C. Scherer'.

Nora C. Scherer
Kingston City School District
Board of Education

SHAW, PERELSON, MAY & LAMBERT, LLP
ATTORNEYS AT LAW
21 VAN WAGNER ROAD
POUGHKEEPSIE, NEW YORK 12603
(845) 486-4200
FAX (845) 486-4268

STEPHEN A. PERELSON (1941-2002)
DAVID S. SHAW
MARGO L. MAY
MICHAEL K. LAMBERT
MARC E. SHARFF
LISA S. RUSK
BETH L. SIMS
STEVEN M. LATINO
JULIE M. SHAW

GARRETT L. SILVEIRA
MEGAN A. SHEDDEN *
JENNIFER A. GEMMELL

MARK C. RUSHFIELD *
OF COUNSEL
MARIA D. GILL **
OF COUNSEL
JOHN E. OSBORN
OF COUNSEL

* also admitted in New Jersey

** also admitted in Connecticut

WESTCHESTER OFFICE
115 STEVENS AVENUE
VALHALLA, NEW YORK 10595
(914) 741-9870
FAX (914) 741-9875

MEMORANDUM

TO: BOARD OF EDUCATION MEMBERS
DR. PAUL J. PADALINO, SUPERINTENDENT OF SCHOOLS

FROM: DAVID S. SHAW, ESQ. AND BETH L. SIMS, ESQ.

RE: PROXIMITY OF GUN STORE AND SHOOTING RANGE TO SCHOOL

DATE: APRIL 29, 2016

As discussed at the Board of Education meeting held on March 30, 2016, we have researched the laws that may influence the location of a gun store nearby a public school building of the District.

The federal Gun-Free Schools Act at Section 922(2)(a) generally prohibits the knowing possession of firearms within 1,000 feet of a school zone (defined as in or on the grounds of and/or within a distance of 1,000 feet of a public, parochial or private school). This restriction does not, however, apply to the possession of a firearm on private property which is not part of school grounds and/or where the person possessing the firearm is licensed by the State in which the school zone is located and/or when the firearm is in a locked container or a locked firearms rack on a motor vehicle and/or a firearm that is unloaded when a person is traversing school premises to gain access to public or private land open to hunting if authorized by school authorities. [See 18 U.S.C. § 922(q)(2)(A)].

The District does not have to create the school zones as they are created by the Act itself and defined by Section 921(25) as: "In or on the grounds of a school and within 1,000 feet of the grounds of a public parochial or school¹." However, because an individual must "know or have reasonable cause to believe"² that they are within a school zone for their gun possession/use conduct to be unlawful, the District must provide notice of the school zone (i.e. the area[s] within 1,000 feet of school district property) to enable enforcement. It is, therefore, advisable for the District to provide the public with written notice of its school zones (including notice that the District does not permit school district property to be traversed with unloaded guns for the purpose of gaining access to public or private lands open to hunting) and to post the boundaries and location(s) of the school gun free zone(s) for enforcement purposes. New York State Penal law Section 265³ also addresses the presence of guns in and near school buildings; however these sections of law only prohibit possession of guns *within school buildings and on school district property*.

While neither New York State, nor Federal, law specifically addresses the sale of firearms at a specific distance from school property, if unlicensed patrons would necessarily need to traverse school district property or public property within a distance of 1,000 feet of the District's property to get to and/or from the gun store it would invite violations of law. The critical question is: "Will school or other public property within 1,000 feet of the school district property" likely be traversed by the store's patrons? If the answer is "no", then there is no state or federal legal issue. If the answer is "yes", then there is a potentially serious concern. While a store owner may ensure that they only sell and allow discharge of guns to and by licensed persons, it is impossible to ensure that persons traversing the property within 1,000 feet of their store who are coming to their store with guns for repair or sale will be licensed by New York State to purchase and/or carry firearms and/or will transport unloaded firearms in a locked container and/or on a locked motor vehicle firearms rack while coming to and leaving their store.⁴ Even by refusing to service and purchase guns from unlicensed persons and/or persons who violate these requirements, store owners cannot prevent the illegal act(s) of such persons traversing school and/or public property on their way to and from the store. Thus, it would seem if school district and/or public property within 1,000 feet of a school would need to be traversed

¹ The Gun-Free Schools Act at 18 U.S.C. § 922(4) explains: "Nothing in this subsection shall preempt or prevent a state and/or local government from enacting a statute establishing gun free school zones as provided in this subsection." Thus, it would seem that a State or local law could create a more expansive definition of a "school zone".

² The Gun-Free Schools Act at 18 U.S.C. § 922(g)(2)(A) states: It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects Interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

³ NYS Penal Law § 265.01(3). A person is guilty of criminal possession of a weapon in the fourth degree when: He knowingly has in his possession a rifle, shotgun or firearm in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, without the written authorization of such educational institution;

NYS Penal Law § 265.06. Unlawful possession of a weapon upon school grounds: It shall be unlawful for any person age sixteen or older to knowingly possess any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring, air, piston or CO2 cartridge in or upon a building or grounds, used for educational purposes, of any school, college or university, with-out the written authorization of such educational institution.

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by store patrons, the potential location would invite violations of state and/or federal law and may require frequent and vigilant police enforcement.

We are available to further discuss the content of this memo and answer any questions that the Board may have during Executive Session.

DSS/BLS:ms